

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-35 were pending prior to the Final Office Action. Claims 6, 14, and 22 have been canceled and claims 28-32 have been withdrawn from consideration. Therefore, claims 1-5, 7-13, 15-21, 23-27, and 33-35 are not withdrawn and remain pending. Of these, claims 1, 9, 17, and 35 are independent.

OBJECTION TO THE CLAIMS

The Examiner notes that claims 6-8, 14-16, and 22-24 are proper multiple dependent claims and refer to other claims (any one of claims 1-5, 9-13, 17-21, respective) in the alternative only. *See Final Office Action, item 2.* As such, the Examiner states he will consider the multiple dependent claims 6-8, 14-16, and 22-24 as dependent claims to independent claims 1, 9, and 17, respectively.

If the Examiner is asserting that he considers claims 6-8, 14-16, and 22-24 as only being dependent on only the independent claims 1, 9, and 17, respectively, Applicant respectfully disagrees. When multiple dependent claims are presented, the dependency can only be presented in the alternative. *See M.P.E.P. 608.01(n); 37 CFR 1.75(c).* As admitted in the Final Office Action, the multiple dependent claims are proper.

When proper multiple dependent claims are presented, the claims must be examined accordingly. As an example, since claim 7 properly recites "any one of claims 1 to 5," then claim 7 must be examined as five different claims where one claims depends from claim 1, second from claim 2, and so on. If the Examiner's assertion is taken, then there is no distinction between multiple dependent claims and a claim that depends from a single claim. Clearly, this is not the intention.

Applicant respectfully request that the objection to the claims be withdrawn.

ELECTION/RESTRICTION

In the Office Action, the Examiner required a Restriction between the following groups of claims (*See Final Office Action, item 3*):

- Group 1: claims 1-27 and 33-35 as allegedly being drawn to "distributed data processing: client/server," classified in class 709, subclass 203; and
- Group 2: claims 28-32 as allegedly being drawn to "computer-to-computer data transfer regulating: transfer speed regulating," classified in class 709, subclass 233.

The Examiner required an election to be made between the two groups. Upon telephonic discussion with the Examiner and Supervisor, it was

determined that a proper course of action should have been for the Examiner to issue Election by Original Presentation and withdraw Group 2 claims from consideration. Therefore, Applicant considers claims 1-5, 7-13, 15-21, 23-27, and 33-35 to be pending.

REJECTION – ARIAS, MOGUL

Claims 1-2, 9-10, 17-18, 25-27, and 35 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Arias (USP 5,724,514). *See Final Office Action, items 6-10.* Also, claims 3-8, 11-16, and 19-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Arias in view of Mogul et al. (USP 6,243,761 B1, hereinafter “Mogul”). *See Final Office Action, items 11-15.*

In this Reply, independent claims 1, 9, and 17 are amended to include the feature of canceled claims 6, 14, and 22, respectively. Thus, Applicant considers all pending claims 1-5, 7-13, 15-21, 23-27, and 33-35 as allegedly being unpatentable over Arias in view of Mogul. As such, Applicant respectfully traverses.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142.* One requirement to establish *prima facie case* of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. *See M.P.E.P. 2142;*

M.P.E.P. 706.02(j). Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Arias fails to teach or suggest each and every claimed element. For example, independent claim 1 recites, in part a method of controlling image data transfer between a server storing image data and a client connected to the server via a network and receiving the image data by accessing the server, the method comprising the step of “transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where the number of the image data sets to be transferred has been determined to be 0.” Contrary to the Examiner’s assertion, Arias cannot be relied upon to teach or suggest at least this recited feature.

In the Final Office Action, the Examiner alleges that column 4, lines 14-18 and 29-31; column 6, lines 55-59; and Figures 7A-7C of Arias disclose this feature. Column 4, lines 14-18 of Arias state, “It is therefore preferable to determine the effective data transfer rate for each primary data object obtained. Based on this information, the system may dynamically select between methods of obtaining data objects either sequentially or concurrently.” There is nothing in this statement that one can reasonably infer a transfer of a message takes place to notify the client that the number of image data sets to be transferred is 0.

Column 4, lines 29-31 of Arias state, "The effective transfer rate is compared to a predetermined value. A number of transfers to perform concurrently is determined based upon the comparison." Again, there is nothing in this statement that one can reasonably infer a transfer of a message takes place to notify the client that the number of image data sets to be transferred is 0.

Column 6, lines 55-59 of Arias refer to Figures 7A-7C to indicates steps to obtain secondary data objects sequentially (Figure 7B) or concurrently (Figure 7C). Figure 7A and corresponding description merely discloses that a primary object is obtained. Based on the transfer rate of the primary object, it is determined whether the secondary objects should be retrieved sequentially (for slow connections) or concurrently (for fast connections). Once again, there is nothing disclosed in Figures 7A-7C and corresponding descriptions that one can reasonably infer a transfer of a message takes place to notify the client that the number of image data sets to be transferred is 0.

Indeed, the entirety of Arias cannot be relied upon to teach or suggest this feature. Mogul has not been, and indeed cannot be, relied upon to correct for at least the above-noted deficiency of Arias. Therefore, independent claim 1 is distinguishable over the combination of Arias and Mogul.

Independent claim 9 recites, in part an apparatus for controlling image data transfer between a server storing image data and a client connected to the

server via a network and receiving the image data by accessing the server, the apparatus comprising “means for sending a message to the client notifying that the number of the image data sets is 0 in the case where the number of the image data sets has been determined to be 0.” In the Final Office Action, the Examiner also alleges that column 4, lines 14-18 and 29-31; column 6, lines 55-59; and Figures 7A-7C of Arias disclose this feature.

Contrary to the Examiner’s allegation, it has been amply demonstrated that Arias cannot be relied upon to disclose the feature of means for sending a message to the client notifying that the number of the image data sets is 0 in the case where the number of the image data sets has been determined to be 0. Also, Mogul has not been, and indeed cannot be, relied upon to correct for at least the above-noted deficiency of Arias. Therefore, independent claim 9 is distinguishable over the combination of Arias and Mogul.

Independent claim 17 recites, in part a computer-readable recording medium storing a program to cause a computer to execute a method of controlling image data transfer between a server storing image data and a client connected to the server via a network and receiving the image data by accessing the server, the program comprising the procedures including “transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where the number of the image data sets to be transferred has been determined to be 0.” In the Final Office Action,

the Examiner also alleges that column 4, lines 14-18 and 29-31; column 6, lines 55-59; and Figures 7A-7C of Arias disclose this feature.

Contrary to the Examiner's allegation, it has been amply demonstrated that Arias cannot be relied upon to disclose the feature of transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where the number of the image data sets to be transferred has been determined to be 0. Also, Mogul has not been, and indeed cannot be, relied upon to correct for at least the above-noted deficiency of Arias. Therefore, independent claim 17 is distinguishable over the combination of Arias and Mogul.

Claims 2-5, 7-8, 10-13, 15-16, 18-21, 23-27, and 33-35 depend from independent claims 1, 9, and 17 directly or indirectly. For at least the reasons stated with respect to the independent claims, these dependent claims are also distinguishable over the combination of Arias and Mogul.

Applicant respectfully requests that the rejection of claims 1-5, 7-13, 15-21, 23-27, and 33-35 based on Arias and Mogul be withdrawn.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to

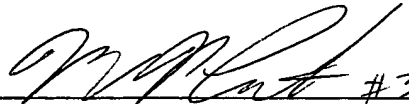
be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.


Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant respectfully petitions for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$120 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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2091-0230P

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